Cr.A 631 / 90

CF0000059306

(XII-B-8(2))
C. J. P. R.-2000-6-88

High Court of Madhya Pradesh
JABALPUR
Received on 2 JUN 1990
Registration No. 231
Receipt Clerk
High Court, Jabalpur.

APPEAL OF PRISONER

No. 1656. Name तेजन राम

Father's name नवकू राम जाति: पनिका साकिन: कलचा, थाना: लरवनपुर

Residence जिला: सरगुजा (मध्य) Age 60 वर्ष (लगभग)

Sentenced आजन्म कारावास on 26.4.1990

Under section 302 I.P.C. by द्वितीय अपर सत्र न्यायाधीश सरगुजा (अम्बिकापुर) मध्य प्र. श्रीमती न्यायाधीश श्री एस के मिश्रा S.T. No 210/89

I explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 26.4.1990.

2 Date of which copy received 30.4.1990

3 Date on which Appeal sent 28.5.90.

4 whether the prisoner wishes to be represented or not – Yes / No.

No. / Name तेजन राम आत्मज नवकू पनिका

Continued in केन्द्रीय Jail रायपुर (मध्य प्र)

No. 602 / अप्रकोल 90 Dated 28.5.90 1990

Forward to the ~~CHIEF JUDICIAL MAGISTRATE~~ माननीय अतिरिक्त पंजीयक महोदय मध्य प्र उच्च न्यायालय जबलपुर (मध्य प्र)

a gather which a copy of order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent
जेल अधीक्षक, रा.

Date of receipt in C. J. M's office

Date of receipt record to accompany

Memo of Appeal of the Appellate court

No Dated 198

Forwarded to the

HIGH COURT OF CHHATTISGARH AT BIL

Cr.Appeal No.631/1990

Tejan Ram

-Versus-

State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
Dilip Raosaheb Deshmukh
Judge

Hon'ble Shri Justice Fakhruddin

Sd/-
Fakhruddin
Judge

Post for

Sd/-
(JUDGE)
15.07.2005

(23)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.631/1990

Tejan Ram

-Versus-

State of Madhya Pradesh (now Chhattisgarh)

CORAM: HON'BLE SHRI FAKHRUDDIN,
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, JJ

Appellant by Ms. Sharmila Singhai, Advocate

Shri U. N. S. Deo, Govt. Advocate for the State.

J U D G M E N T

(Delivered on 18.07.2005)

Per Dilip R. Deshmukh, J.

This appeal is directed against the judgment dated 26th April 1990 passed by Shri S.K. Mishra, 2nd Additional Sessions Judge, Ambikapur (Surguja) in Sessions Trial No.210/1989 whereby the appellant has been convicted under Section 302 I.P.C. and sentenced to undergo imprisonment for life.

2. It is not disputed that Seema Kumari P.W.5 is the daughter of the deceased Hariharnath Pandey and Jharkhande Pandey, P.W.1 is the father of the deceased.

3. Briefly stated the prosecution story is that on 9.4.1989 at about 8.00 P.M. the deceased Hariharnath Pandey was returning from the house of Somarsai P.W.3 after watching television with Seema Kumari P.W.5 and son Rajesh. On way, the appellant all of a sudden came from the front and stabbed Hariharnath Pandey in the stomach by knife. The appellant-accused pulled the knife out

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and ran away. Hariharnath Pandey also sustained injury in the thumb of left hand.

4. On the same day, Hariharnath Pandey lodged F.I.R. at Police Station Lakhanpur situated 16 kilometers away from the place of occurrence at 10.30 P.M. Hariharnath Pandey was sent for medical examination to Primary Health Centre, Lakhanpur where Dr. M.H.Parmar P.W.19 upon examination found an incised wound on left thumb on the Palmer aspect sized 1 ½" x 1/8" x 1/8" and one penetrating incised wound at right hypochondria of the abdomen sized ¼" x ½" x cutting the interior aspect of the abdominal wall with bleeding present. Dr. Parmar packed and dressed the wound and gave the opinion vide report Ex.P.19 that the penetrating incised wound was grievous in nature and was dangerous to life.

5. On 10.04.1989 Dr. B. P. Chandra examined Hariharnath Pandey in the Male Surgical section of District Hospital Ambikapur and found him fully conscious and able to give statement and gave certificate to that effect vide Ex.P.9 at 2.55 A.M. The Executive Magistrate Shankarlal Soni P.W.14 recorded the dying declaration of Hariharnath Pandey in presence of Dr. B.P.Chandra. Hariharnath Pandey in his statement Ex.P.10 told that about four years before the occurrence he had beaten the appellant since the appellant had beaten his son and at that time the appellant had threatened to kill him but there was no quarrel thereafter and before the occurrence and on 09.04.1989 at about 8.00 P.M. when he was returning home from the house of Somarsai, the appellant came all of a sudden and stabbed him by knife in his stomach.

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6. Hariharnath Pandey succumbed to the injuries on 20.4.1989 in Mission Hospital, Ambikapur. Post-mortem on the body of Hariharinath Pandey was conducted by Dr. A.K.Jain on 21.4.1989 who found a stab wound through and through sized 3/4" x ½" in right side of abdomen 3" away from Umbilicus and ½" below the level of plain Umbilicus. In his opinion, cause of death was due to shock as a result of septicaemia.

7. On 12.4.1989 S.H.O. K. L. Magraiya, Police Station Lakhanpur at the instance of the appellant, seized one folding knife with an iron handle with blood like stains from one Jot Singh to whom the appellant had given the knife soon after the occurrence. On the same day vide Ex.P.7 one white half sleeve shirt and one Khadi Dhoti containing blood like stains were also seized from the appellant. Spot map was prepared vide Ex.P.8 by Patwari Baikunthnath Singh P.W.10. Blood stained soil and ordinary soil were also seized on 10.04.1989 vide Ex.P.13 by Sub-Inspector U.S.Mishra. One half shirt and one sando banian were also seized from the appellant vide Ex.P.14 by Sub-Inspector U.S.Mishra who also prepared the spot map vide Ex.P.15. On being sent for chemical analysis, Forensic Science Laboratory, Sagar, blood stains were confirmed on the half shirt and the Dhoti seized from the accused and also on the knife seized at the instance of appellant from Jot Singh.

8. After completion of investigation, the appellant was prosecuted for offence under Section 302 I.P.C. Upon committal of the case by Shri V.B.Singh, Judicial Magistrate First Class, Ambikapur, the appellant was tried for the offence under Section

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302 I.P.C. by the 2nd Additional Sessions Judge, Ambikapur. The accused abjured his guilt, pleaded false implication in his examination under Section 313 Cr.P.C. and led no evidence in defence. Prosecution examined as many as 20 witnesses in support of its case. The learned trial Judge relying upon the prosecution evidence convicted and sentenced the appellant as shown in paragraph 1 supra.

9. Ms. Sharmila Singhai, learned counsel for the appellant has assailed the conviction of the appellant under Section 302 I.P.C. on the ground that no legal evidence was led by the prosecution to substantiate the guilt of the appellant for the offence of murder. She also contended that Seema Kumari P.W.5 was an interested witness being the daughter of the deceased. The fact that Dr. A.K.Jain had in paragraph 7 of cross-examination admitted that immediate treatment could have saved the life of Hariharnath and the fact that death of Hariharnath Pandey occurred after 11 days on 20.04.1989 in Mission Hospital, Ambikapur, took the offence, if any, out of the ambit of Section 302 I.P.C. There was nothing on record to prove any motive for the appellant to commit murder of Hariharnath Pandey. Only one injury was alleged to have been inflicted by the appellant in the stomach of Hariharnath. Placing reliance on ***Rajangam Vs. State (Tamil Nadu),*** reported in **A.I.R.1993 S.C. 2636,** ***Sarup Singh Vs. State of Haryana represented by the Home Secretary,*** reported in **A.I.R. 1995 S.C. 2452,** ***Ramachandra Odhar Vs. State of Bihar,*** reported in **A.I.R. 1999 S.C. 998** and ***Ramaswami Vs. State of Tamil Nadu,*** reported in **(1982) 1 SCC 474** she contended in the alternative

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that the offence, if any, committed by the appellant would not travel beyond Section 304 Part II of the I.P.C.

10. On the other hand, Shri U.N.S.Deo, G.A. argued that the testimony of Taees Ram P.W.2 clearly establishes that the appellant with the intention of stabbing Hariharnath Pandey was lurking in wait for Hariharnath at the time of occurrence and had with the requisite intention to kill, inflicted the penetrating wound on vital part of Hariharnath Pandey as a result of which Hariharnath Pandey succumbed to the injury on 20.04.1989. Placing reliance on ***Mahesh Balmiki Vs. State of M.P.,*** reported in **2000 SCC (Cri.) 178** argued that the trial Court had rightly convicted the appellant under Section 302 I.P.C.

11. We have considered the rival submissions and have also given our thoughtful consideration to the evidence on record. So far as the question whether Hariharnath Pandey had died a homicidal death is concerned, the wholly unrebutted testimony of Dr. M.H.Parmar P.W.19 proves that he examined Hariharnath Pandey at 11.00 P.M. on 9.4.1989 and found an incised wound on left thumb on the Palmer aspect sized 1 ½" x 1/8" x 1/8" and one penetrating incised wound at right hypochondria of the abdomen sized ¼" x ½" x cutting the interior aspect of the abdominal wall with bleeding present on Hariharnath Pandey. In his opinion, the injury was caused by a sharp object. Penetrating incised wound was a grievous injury. Dr. A.K.Jain P.W.20 who conducted the post-mortem examination on Hariharnath Pandey has deposed that he found a stab wound through and through sized 3/4" x ½" in right side of abdomen 3" away from Umbilicus and ½" below the

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level of plain Umbilicus. He opined that the septic infection had taken place during treatment in the hospital.

12. Taees Ram P.W.2 is an independent eye witness who had seen the occurrence. He has deposed that at 8.00 P.M. when he was smoking Bidi near the house of Somarsai, he saw the accused Tejan Ram lurking who had covered himself with a white dhoti. He asked the appellant to go away but the appellant did not say anything. At that time lights went off. Hariharnath Pandey with his daughters Seema Kumari, Pushpa and son Pappu came out from the house of Somarsai after watching television and started for his house and when they reached near the Mahua tree, the appellant struck a knife blow on the stomach of Hariharnath Pandey and ran away. Hariharnath Pandey was bleeding profusely from the stomach and there was an injury in his thumb also. The appellant had run away with the knife. This testimony is wholly unrebutted in cross-examination.

13. Seema Kumari P.W.5 has also fully corroborated the testimony of Taeesram and has deposed that no sooner her father Hariharnath Pandey proceeded towards their house from the house of Somarsai, the appellant Tejan Ram came and dealt a knife blow on the stomach of her father. The appellant pulled out the knife and ran away thereafter. Even this testimony is wholly unrebutted. Subhagram P.W.6 is the witness who testified that the Somarsai came to his house at about 8.00-9.00 P.M. and told him that Tejanram had stabbed Hariharnath Pandey by a knife. He then went to the place of occurrence, saw the injured

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Hariharinath who was bleeding profusely from the stomach. Hariharnath had told him that Tejanram had stabbed him.

14. Jot Singh P.W.7 has testified that in the night at about 10.00 P.M. Tejanram came to his house and made an extra judicial confession that he had stabbed Hariharnath by a knife and wanted to sleep in his house and handed over the knife to him which had blood like stains. Tejanram then went away to his house. This knife was seized from Jot Singh vide Ex.P.5. No question has been asked in cross-examination to this witness. Ramnarayan P.W.9 has also proved the seizure of one knife from Jot Singh vide Ex.P.7. Sharif Khan P.W.16 has also proved the seizure of one half sleeve white shirt and one Khadi Dhoti from the appellant Tejanram. Nothing has been elicited in cross-examination of these witnesses which would render them unworthy of credit. We find ~~that~~ the testimony of these witnesses wholly reliable.

15. Executive Magistrate Shankarlal Soni P.W.14 has proved that on 10.04.1989 he had recorded the dying declaration of Hariharnath Pandey in District Hospital, Ambikapur wherein Hariharnath Pandey had said that due to an old quarrel the appellant Tejanram had threatened to kill him and on 9.4.1989 at about 8.00 P.M. in village Kalcha while he was returning from the house of Somarsai after watching television, the appellant came and stabbed him in the stomach and ran away. Dr. B.P.Chandra P.W.11 has proved that Hariharnath Pandey was fully conscious and was in a position to make the dying declaration Ex.P.10 which was given in his presence. The presence of blood like stains on the

clothes of the appellant and the knife seized from Jot Singh also proves the complicity of the appellant beyond all reasonable doubt.

16. The testimony of the abovementioned prosecution witnesses is wholly reliable and proves that Hariharnath Pandey had died a homicidal death due to a penetrating incised injury inflicted by the appellant Tejan Ram by knife on the night of 9.4.89. Thus, in our considered opinion, the prosecution has established beyond doubt that the appellant had given a knife blow to Hariharnath Pandey and that he died as result of the injury caused by that blow. However, there is no medical evidence on record to show that injury sustained by Hariharnath was sufficient in the ordinary course of nature to cause death. Dr. A.K.Jain has in paragraph 6 testified that the patient had died due to complications of Septicaemia. If proper treatment was given, life of Hariharnath could have been saved. The dispute narrated by Hariharinath Pandey in his dying declaration Ex.P.10 was not such as would have prompted the appellant Tejanram to cause the death of Hariharnath Pandey that too after a period of four years. Besides, the accused had inflicted only one injury in the stomach of Hariharnath Pandey. There was no sudden fight between the appellant and the deceased and the appellant had given a single blow with knife on the stomach of Hariharnath Pandey. No other injury was caused by the appellant upon the deceased. The appellant himself went to Jot Singh to handover the blood stained knife and made extra-judicial confession.

17. So far as the case of ***Mahesh Balmiki Vs. State of M.P*** (supra) relied upon by the Government Advocate, is concerned, the

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facts and circumstances of that case are different as in that case the appellant had given a single blow with knife on the chest on the left side of the sternum between the coastal joint of the 6th and 7th ribs, fracturing both the ribs. The track of the wound had gone through the sternum, pericardium, anterior and posterior after passing the ribs and thereafter entering the liver and perforating a portion of the stomach. Therefore, it was held that requirements of Exception 4 of Section 300 I.P.C. were not satisfied. However, in this case, the single injury was caused by a knife on the stomach. As per medical evidence, if proper treatment was given, life of Hariharnath could have been saved. Death of Hariharnath occurred due to Septicaemia and as a result of infection, during treatment in the Hospital. In the case of ***Rajangam Vs. State (Tamil Nadu)*, A.I.R. 1993 S.C. 2636**, the accused had inflicted single injury by knife on the abdomen of deceased. The deceased had undergone operation and death had occurred after 8 days. It was held that the accused could be attributed with the knowledge that he was likely to cause death but not the intention to cause death. It was therefore held that the offence fell under Section 304 Part II I.P.C. In the instant case also Hariharnath died after 11 days in the District Hospital due to Septicaemia as a result of complications. No surgical operation had been performed on Hariharnath. In medical opinion also, if proper medical aid was given, his life could have been saved. Therefore, we are of the considered opinion that the offence committed by the appellant does not travel beyond Section 304 Part II of the I.P.C.

17. In the result, the appeal is partly allowed. Conviction of the appellant is altered to Section 304 Part II of the I.P.C. We, therefore, reduce the sentence to rigorous imprisonment for 10 years. However, Shri U.N.S.Deo G.A. has informed that the accused has already undergone the sentence and has been released from the jail on 15.08.2003 on the eve of Independence Day upon remission being granted.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Sd/-
Fakhruddin
Judge

Anjani